

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: WEDNESDAY, JULY 28, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

CALL TO ORDER

Chairperson Peter Young called the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

ROLL CALL

The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Meredith Ching
Mr. Clayton Dela Cruz

Dr. Chiyome Fukino
Dr. Lawrence Miike

STAFF

Deputy Director Yvonne Izu, Roy Hardy, Ed Sakoda, Faith Ching, Kevin Gooding, Glenn Bauer, Ryan Imata, Dean Uyeno, Eric Hirano, Dennis Imada and Jennifer Bethel

COUNSEL

Linda Chow, Esq.

OTHERS

Koa Kaulukukui, Dr. Jonathan Scheuer, Kapua Sproat, Manabu Tagomori, Ron England, Jeffrey Tyau, Norman Evans, Dr. Jim Anthony and Rosemary Liu

All written testimonies submitted at the meetings are filed in the Commission office and are available for review by interested parties.

ANNOUNCEMENT

Chairperson Young introduced Dr. Lawrence Miike and welcomed him as the Water Commission's seventh member.

APPROVAL OF MINUTES

Did not have quorum to approve the June 16, 2004 minutes; therefore, deferred until the next Commission meeting.

SUBMITTALS

A-1. APPLICATION FOR A WATER USE PERMIT, Kapaka Farm 1 & 3 Wells (Well No. 3554-01 & 3654-03), TMK 5-3-012: 001, WUP Nos. 529 & 530, Future (Agricultural) Use for 0.039 & 0.190 mgd, Koolauloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ryan Imata

RECOMMENDATION:

Staff recommends that the Commission approve the issuance of water use permit no. 529 & 530 to Kapaka Farm for the reasonable and beneficial use of 0.039 & 0.190 million gallons per day of potable water for agricultural use from the Kapaka Farm 1 & 3 Wells (Well No. 3554-01 & 3654-03), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

DISCUSSION:

Commissioner Miike expressed some concern about the lack of action from 1999 to the time the submission was finally completed and expressed his disagreement with the statement in the staff submittal, that the Decision and Order (D&O) did not specify that the application needed to be complete. Since the application requirement arose out of a contested case, and the applicant wasn't diligent in completing the application, Commissioner Miike questioned whether violations should be forgiven. He stated that even if there was a nominal fine, it should be

on their record. Commissioner Miike suggested that the Commission consider this policy for future violations.

Mr. Jeff Tyau and Mr. Norman Evans testified on behalf of Kapaka Farm. Mr. Tyau stated that the summary of staff's submittal was very accurate. Mr. Tyau explained that, from the time the application was submitted to when staff sent the request for additional information, Kapaka Farm went through a staff change and during the change over, the paperwork got misplaced. Since then, Mr. Tyau has been serving as a specialist on water related matters. Mr. Tyau indicated that Kapaka Farm has been submitting monthly water reports, since the D&O, and future water use reports will be made in a timely manner.

Commissioner Miike stated that since this was a litigated issue, it wasn't just an application or a backlog of paperwork and it was a high visibility issue for Kapaka Farm. Nevertheless, he finds it troubling that all of this took place in 5 years.

Mr. Evans indicated that there are 258 families farming and they pay nothing for the land, the water or for anything on the farm, so they can support and supplement their family's food budget.

Dr. Jim Anthony, Executive Director asked the Commission to set an example by imposing a substantial fine. He was also critical of the staff's analysis of the amount of water required and the lack of analysis of the effect on nearby streams.

Deputy Director Izu staff was being conservative in not recommending a fine because the D&O did not specify that the application needed to be complete. Dr. Miike pointed out that this would set a bad precedence for others to take their time to complete the application, as they would not get punished. Chairperson Young asked whether staff had any recommendations on a fine for this case. Deputy Director Izu indicated that because of what their recommendation was on this case, there were no amounts determined for a fine. Deputy Director Izu stated that the past Commission. could have imposed a fine of up to \$1,000.00 per day which was increased to \$,5000.00 per day during the past legislative session. Deputy Director Izu mentioned that the Commission in the past had adopted a penalty policy based on first time violation and that the staff is working on a new policy for Commission's consideration.

There was a discussion about how water duties were arrived at and a comparison of the water duties in this case with the duties arrived at in the Waiahole Ditch case.

Mr. Tyau again addressed the Commission, stating that they do not feel they submitted a grossly negligent and partial application, but a full and complete application with their water use data. Mr. Tyau stated that he feels that the request for water usage from Kapaka Farms is reasonable, as it accommodates

250 families that have a crop area of 10 to 15 feet each. Mr. Tyau indicated that it would be hard to estimate water usage due to the fact that crops vary with each family.

Dr. Jim Anthony addressed the Commission again, regarding the amount of water used and again urged that a substantial fine be imposed. He asked that the matter be deferred to address these issues.

Commissioner Miike noted that the moving average, over quite a long period of time, is less than the requested amount. He, therefore, suggested that the Commission defer a decision and have staff address and look into the matter of fines, also reducing the allocation to what the actual moving average has been over the past 4 to 5 years.

Commissioner Fukino asked if there is a standard guideline or a table the staff uses to determine a reasonable increase and if there is a formula that is used to determine the amount or is it always set at the 12-month moving average. Deputy Director Izu stated that the amount is normally estimated by the 12-month moving average, as some months may be higher than others.

Commissioner Ching asked the applicant about the stability of the farmers and if they anticipate new farmers coming in. Mr. Tyau indicated that there are 250 families and that there are changeovers.

In response to a question from Commissioner Ching, Mr. Tyau described the water system. Mr. Evans added that farmers are allowed to water their block, twice a week on a set timetable. Mr. Evans indicated that farm managers turn the water on and off based on those timetables. Mr. Evans also mentioned that there isn't much wasted water as the farmers are out at their set times and that the water pressure is low and that there are times when the water is not turned on for weeks, due to rainfall. Mr. Evans stated that this is a very closely monitored system.

Commissioner Fukino asked the staff to clarify how the application was incomplete. Staff indicated that Table 1 of the application was not submitted and this was generally a large part of the application pertaining to the amount of use. Staff also stated that the signature from the Department of Planning and Permitting was incomplete on Table 1.

Chairperson Young asked if there would be any impact to the user if the Commission were to defer action and if this would mean that the applicant would not be able to use any water. Deputy Director Izu stated that the decision would be left up to the Commission and the past Decision and Order stated that the applicant would be able to use the water until the application process is completed. Deputy Director Izu indicated that the staff does not view the application process as being completed until the decision is made by the Commission.

MOTION: (Miike/Dela Cruz)

To amend the Recommendation by deferring action and meanwhile allowing applicant continue water use.

UNANIMOUSLY APPROVED

AUTHORIZATION FOR CONSTRUCTION/CONSULTANT CONTRACTS

B-1. Authorization to Hire Consultant for CIP Project for Waihee Deep Monitor Well, Maui

PRESENTATION OF SUBMITTAL: Deputy Director Izu/Kevin Gooding

RECOMMENDATION:

That the Commission authorizes the Chairperson to enter into an agreement for consultant services for planning and design of the Waihee Deep Monitor Well, Maui, and sign the necessary documents to implement the project, subject to the release of funds by the Governor.

DISCUSSION:

Deputy Director Izu stated that the submittal neglected to indicate that the contract is subject to approval by the Attorney General.

Staff provided a status report to the Commission on the Waihee Deep Monitor Well and that the negotiations with the landowner, RDD, LLC, which is a company owned by Betsil Brothers, has been going well. Staff indicated that they are working on the approval with the Governor to release funds and a right of entry. Once these are in order, they will be able to receive bids.

AMENDED RECOMMENDATION:

To approve as recommended by staff with the amendment that contract is subject to approval by the Attorney General.

MOTION: (Ching/Dela Cruz)

To approve as amended

UNANIMOUSLY APPROVED AS AMENDED

B-2. Authorization to Award the Construction Contract for Job No. G55CO18B, Waimalu Deep Monitor Well, Waimalu, Oahu

PRESENTATION OF SUBMITTAL: Deputy Director Izu

RECOMMENDATION:

That the Commission authorizes the Chairperson to proceed with awarding the contract for Job No. G55CO18B, Waimalu Deep Monitor Well, Waimalu, Oahu to Valley Well Drilling, for their low bid of \$208,749.60, and sign the necessary documents to implement the project.

DISCUSSION:

Deputy Director Izu stated that the submittal neglected to indicate that the contract is subject to approval by the Attorney General.

AMENDED RECOMMENDATION:

To approve as recommended by staff with the amendment that contract is subject to approval by the Attorney General.

MOTION: (Ching/Dela Cruz)

To approve as amended

UNANIMOUSLY APPROVED AS AMENDED

B-3. Authorization to Award the Construction Contract for Job No. G55CO18A, Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well, Kunia, Oahu

DISCUSSION:

Deputy Director Izu stated that the submittal neglected to indicate that the contract is subject to approval by the Attorney General.

AMENDED RECOMMENDATION:

To approve as recommended by staff with the amendment that contract is subject to approval by the Attorney General.

MOTION: (Ching/Dela Cruz)

To approve as amended

UNANIMOUSLY APPROVED AS AMENDED

B-4. Authorization to Award the Construction Contract for Job No G55CM18A, Wailuku (Iao) Deep Monitor Well, Wailuku Maui

DISCUSSION:

Deputy Director Izu stated that the submittal neglected to indicate that the contract is subject to approval by the Attorney General.

AMENDED RECOMMENDATION:

To approve as recommended by staff with the amendment that contract is subject to approval by the Attorney General.

MOTION: (Ching/Dela Cruz)

To approve as amended

UNANIMOUSLY APPROVED AS AMENDED

NON-ACTION ITEMS**C-1. Lalakea Alternative Mitigation Project (LAMP) Six Month Oral Presentation – by Kamehameha Schools and Bishop Museum.****DISCUSSION:**

Mr. Manabu Tagomori of Kamehameha Schools and Mr. Ron Englund of Bishop Museum provided the Commission with an update to the Lalakea Alternative Mitigation Project (LAMP) on the Big Island. Mr. Tagomori stated that they are a year and one half into the study and that this is the sixth quarterly report. Mr. Tagomori stated that the arrangement with the Commission has been that an oral report is to be conducted every six months to provide their findings to date. Mr. Tagomori indicated that they are in the process at hiring a contractor to close the remaining two diversions. Mr. Tagomori indicated that weather plays a major factor in these studies as the area is not easily accessible and also that the trails are hard to find after three months.

Mr. Ron England provided a power point presentation and briefly reviewed the history and updated the Commissioners of the Waipi'o LAMP Project. Copies of the power point presentation were also provided to the Commissioners.

Chairperson Young asked for a status of the Lalakea Reservoir. Mr. Tagomori stated that they are working with the Department of Land and Natural Resources, Engineering Division, and under their dam safety program, they will be developing a plan to close the dam.

NON-ACTION ITEM**C-2. Koolau Agriculture, cancellation of water use permits No. 489 for Makalii 1, 2A and 3 wells, (nos. 3452-02, 3453-16 and 3453-13 respectively) – announcement only, no submittal.**

PRESENTATION OF NON-ACTION ITEM: Ryan Imata

Staff reported that water use permit number 489 has been cancelled; therefore, the total allocation permitted for the Koolau Aquifer system will increase to 14.414

million gallons per day and this information was noticed in the monthly bulletin. Staff stated that the source land is owned by Kamehameha Schools. Since Koolau Agriculture lost their lease, Kamehameha Schools requested the cancellation of the Makalii Wells from the water use permit.

OTHER

Chairperson Young announced the dates of the upcoming Commission meetings. Commissioner Miike requested that for every Commission meetings, starting with the next meeting, that staff provide brief updates of unresolved issues and what the progress and status are for each item.

A. NEXT COMMISSION MEETINGS (TENTATIVE)

- 1. August 18, 2004**
- 2. September 15, 2004**

B. ADJOURNMENT

Meeting was adjourned at 10:45 am.

Respectfully submitted,

Karen Stahl
Secretary

Approved as submitted:

YVONNE Y. IZU
Deputy Director-Water